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SERVICE DATE - DECEMBER 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 32432

NEW ENGLAND CENTRAL RAILROAD, INC.  
–ACQUISITION AND OPERATION EXEMPTION–  
LINES BETWEEN EAST ALBURG, VT AND NEW LONDON, CT

Decided: December 18, 2001

We are denying a petition to reopen this proceeding that was filed by an employee of the National Railroad Passenger Corporation (Amtrak).

BACKGROUND

In a decision in this proceeding that was served on December 9, 1994, the Interstate Commerce Commission (ICC) granted the New England Central Railroad, Inc. (NECR) an exemption from the requirements of 49 U.S.C. 10901, permitting it to acquire and operate approximately 325 miles of rail line owned by the Central Vermont Railway, Inc. (CV) between East Alburg, VT, and New London, CT.<sup>1</sup> As a condition to granting the exemption, the ICC required NECR to assume CV's trackage rights obligations to Amtrak over the Connecticut River portion of the line. Amtrak and NECR subsequently negotiated an agreement for Amtrak to operate passenger service over a portion of the line between St. Albans, VT, and Palmer, MA. Amtrak currently operates its "Vermonters" trains pursuant to that agreement.

On June 21, 2001, Mr. W. A. Klinger (petitioner), an Amtrak employee, filed a petition to reopen the 1994 proceeding. He states that Amtrak suspended operating its Vermonters trains on or about May 31, 2001, and claims that the suspension was precipitated by significant deterioration of the track which caused increases in the running time of trains. Petitioner asserts that, even though NECR was repairing the track, it was unclear when service would be restored.

Mr. Klinger indicates that he previously expressed concerns in filings before the ICC in 1994 with regard to protecting Amtrak's rights to operate over the line. He claims that the ICC imposed a condition designed to protect Amtrak's interests and to ensure that NECR maintains

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<sup>1</sup> The ICC's decision was affirmed in Brotherhood of R.R. Signalmen v. ICC, 63 F.3d 638 (7th Cir. 1995).

the line so that Amtrak could operate passenger service over it at 59 miles-per-hour.<sup>2</sup> Petitioner requests that we reopen this proceeding to determine why the line has not been maintained as the ICC originally intended. He also asks that we determine how best to protect Amtrak's operating rights and prevent service interruptions in the future.

NECR responded on August 21, 2001.<sup>3</sup> The carrier states that, since acquiring the line, it has typically conducted programmed maintenance and repair work in the late Spring, after the conclusion of the harsh New England winter. After completing its own programmed maintenance and repair, NECR states, it would normally be notified by Amtrak as to when Amtrak would inspect that portion of the line used for passenger service to determine what additional repairs would be needed to operate the line at FRA Class 3 standards. NECR would then assemble its maintenance employees, equipment and supplies to follow Amtrak's track inspection car and repair any defects found by it.

NECR claims that this system worked well until this year when it was notified by Amtrak that it would inspect the track on May 31, 2001, before NECR had finished its own programmed maintenance and repairs. NECR maintains that Amtrak did not provide it with sufficient notice so that it could assemble and prepare its employees to make immediate repairs on any additional defects uncovered by Amtrak's more detailed inspection. NECR notes that in previous years Amtrak would, if it found additional defects during its inspection, operate over the affected portions of the line at reduced speeds until repairs were completed. Rather than do so this year, however, Amtrak suspended rail passenger service and substituted bus service.

NECR states that it completed repairs 4 days after Amtrak found the original defects. Nonetheless, NECR asserts, Amtrak decided to inspect the line again on June 8 and 9, using criteria designed for 160- and 200-mile per hour track,<sup>4</sup> and determined that additional repairs were needed. NECR indicates that, after it made the additional repairs, Amtrak resumed full passenger service over the line on June 24, 2001.<sup>5</sup>

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<sup>2</sup> This speed would be consistent with Federal Railroad Administration (FRA) Class 3 standards. See 49 CFR 213.9(a).

<sup>3</sup> We will grant NECR's Motion for Leave to Respond Late to Mr. Klinger's petition.

<sup>4</sup> These speeds would be consistent with FRA Class 8 and 9 track standards. See 49 CFR 213.307(a).

<sup>5</sup> NECR notes that the State of Vermont and Amtrak entered into a revised agreement at the end of June 2001, whereby Vermont will pay Amtrak an additional \$600,000 per year to operate passenger service in the State of Vermont. The carrier also notes that it is currently  
(continued...)

## DISCUSSION AND CONCLUSIONS

There is not a sufficient basis here for reopening this proceeding. First, the applicable statutory provisions specifically authorize Amtrak to enforce its rights with regard to the rail passenger services it provides, and do not permit anyone else to do so.<sup>6</sup> The statute authorizes Amtrak to enter into agreements with rail freight carriers to use the carriers' facilities to conduct passenger service ( 49 U.S.C. 24308(a)).<sup>7</sup> Under section 24308(a)(2)(A), the Board is authorized to enforce Amtrak's rights to use a freight carrier's facilities and to resolve disputes instituted by Amtrak against carriers involving the facilities and services provided to Amtrak.<sup>8</sup> In this regard, the statute specifically states that "Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard." 49 U.S.C. 24308(a)(4) (emphasis added). The statute permits only Amtrak – which has not complained to us – to institute actions to redress inadequate track maintenance.<sup>9</sup> Although we understand Mr. Klinger's concerns here, the controlling laws simply do not countenance actions brought by individual parties such as petitioner.

Second, even if the statute permitted us to consider Mr. Klinger's request, we are not convinced that there is any reason to reopen the proceeding now. Although the line apparently

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<sup>5</sup>(...continued)  
negotiating with Amtrak about service arrangements over the line.

<sup>6</sup> See Burlington Nor. R. Co.–Order for Just Compensation, 7 I.C.C.2d 74, 76 (1990) .

<sup>7</sup> This provision was enacted as section 402(a) of the Rail Passenger Service Act of 1970, and codified at 45 U.S.C. 562(a). In Pub. L. No. 103-272, 108 Stat. 745, enacted on July 5, 1994, section 402(a) was recodified in its present form as 49 U.S.C. 24308(a). Under section 205 of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, enacted December 29, 1995, any reference to the "Interstate Commerce Commission" contained in the Act and other federal statutes is deemed to refer to the Board.

<sup>8</sup> See National R.R. Passenger Corp.–Applic.–49 U.S.C. 24308(a), 3 S.T.B. 143 (1998) (permitting Amtrak to transport express traffic over carriers' lines); and National Railroad Passenger Corporation–Petition for Declaratory Order–Weight of Rail, STB Finance Docket No. 33697 (STB served Oct. 22, 1999).

<sup>9</sup> We note that Amtrak's operating agreement with NECR obligates NECR to maintain the line as Amtrak directs and gives Amtrak control over the level of maintenance on the line. Amtrak decides when it will inspect the line and whether the line meets the maintenance standards set forth in the agreement. Amtrak also decides whether to suspend service or operate at reduced speeds over portions of the line.

was not in satisfactory condition for passenger service from May 31 to June 24 (during which time it was inspected by Amtrak on at least 3 occasions), it was subsequently repaired. The line now exceeds the standards established in the operating agreement, and the Vermonter passenger train service appears to have been operating satisfactorily since that time. Furthermore, there has been no indication that there are any ongoing problems with regard to the condition of the involved track. In light of this, reopening the proceeding at this time would serve no useful purpose.

In addition, Mr. Klinger has neither claimed nor shown that there is material error, new evidence or substantially changed circumstances that warrant reopening this proceeding, as required by the Board's procedures. 49 CFR 1115.4.<sup>10</sup>

In light of the above, we will deny Mr. Klinger's petition to reopen this proceeding.

It is ordered:

1. NECR's motion for leave to respond late is granted.
2. Mr. Klinger's petition to reopen this proceeding is denied.
3. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>10</sup> We also note that Mr. Klinger apparently did not serve a copy of his petition on Amtrak and other parties to this proceeding, as required by 49 CFR 1104.12.